

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2008CA3693 |
| |) | EEOC NO.: 21BA82347 |
| PENNEY WASHINGTON, |) | HUD NO.: N/A |
| |) | ALS NO.: 09-0282 |
| Complainant. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CA3693, Penney Washington, Complainant, and McDonald's, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request, and the Department's response to the Complainant's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 2, 2008, the Complainant filed a charge of discrimination with the Department, in which she alleged that the Respondent sent her home from work (Count A) and discharged her (Count B) because of her age (55), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On May 21, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On May 30, 2009, the Complainant filed a timely Request.

2. The undisputed evidence in the investigation file shows that the Complainant was hired by the Respondent on December 17, 2007, as a Swing Manager Trainee.
3. At the time that the Complainant was hired, the Respondent had in place a Dress Code which forbade employees from wearing jeans and sneakers.
4. On December 27, 2007, the Complainant came to work wearing black jeans. The Respondent sent the Complainant home for being in violation of its Dress Code.
5. The Complainant returned to work on January 5, 2008 or January 6, 2008. She was still considered a Swing Manager Trainee.
6. On January 11, 2008, the Complainant told her Supervisor that she could not work the hours that she was scheduled to work.
7. The Complainant alleges that she was terminated by the Respondent on January 15, 2008. The Complainant states that on January 15, 2008, a Swing Manager told her that the Complainant's Supervisor said that the Complainant no longer worked for the Respondent.
8. As part of the Department's investigation into the Complainant's charge, the Respondent submitted records of employees who were discharged in 2008. Four of the five employees discharged that year were under the age of 40. The Complainant was not listed among those discharged employees.
9. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for lack of substantial evidence.
10. As to Count A, there is no evidence that the stated reason for sending the Complainant home from work on December 27, 2007—her violation of the Respondent's Dress Code—was a pretext for age discrimination. The Complainant alleges that there was a younger co-worker who was not sent home for violating the Respondent's Dress Code. However, there is no evidence that the Supervisor who sent the Complainant home for violating the Dress Code had ever witnessed the younger co-worker in violation of the Dress Code. There is no evidence in the file to support the Complainant's contention that younger employees were not held to the same standard as the Complainant regarding adherence to the Respondent's Dress Code.
11. As to Count B, assuming that the Complainant was discharged on January 15, 2008, there is no evidence that age discrimination was the motivation for the Respondent's actions. There is evidence that of the five employees that the Respondent recorded as having been discharged in 2008, 80% of them were

under the age of 40. The Complainant has not otherwise presented any evidence that the Respondent held a bias against employees who were aged 40 or older.

12. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of the charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and McDonald's, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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| STATE OF ILLINOIS |) | |
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| HUMAN RIGHTS COMMISSION |) | Entered this 16 th day of September 2009. |

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini